

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10468 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DIPAKKUMAR NARSIBHAI PATEL

Versus

NORTH GUJARAT UNIVERSITY

Appearance:

MR AR LAKHIA for Petitioner
MR NV ANJARIA for Respondent No.1 & 2
None present for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/02/99

ORAL JUDGEMENT

#. The respondent No.3 is neither necessary nor proper party to this special civil application. Hence its name is ordered to be struck off from the title of the special civil application. The office is directed to make necessary correction in the cause title of the special civil application.

#. Rule. Mr.Anjaria waives service of Rule on behalf of respondents No.1 and 2.

#. Mr.Anjaria seeks permission to file reply on behalf of respondents No.1 and 2, on the record of this special civil application, and the same is ordered to be taken on record.

#. Looking to the fact that this matter pertains to cancellation of examination of petitioner as well as debarring him from appearing in the examination of University upto December 1999, and as the learned counsel for the parties are also in agreement that this matter may be taken up for final hearing today, I consider it to be appropriate to take this matter for final hearing today.

#. Heard the learned counsel for the parties.

#. The learned counsel for the petitioner contended that on the spot, the statement of the petitioner or any other person including the Sr. or Block Supervisor was not recorded by Prof. A.C.Tadvi, the Observer. It has next been contended that Mr.Udesinh L. Rajput, Block Supervisor, has reported to the University that no such incident has taken place at the examination center. His Senior Supervisor has also, what the learned counsel for the petitioner contended, not supported the University's case. Summing up his contentions, the learned counsel for the petitioner submits that relying only on the report of Prof.A.C.Tadvi, for the purpose of cancelling the examination of the petitioner and debarring him to appear in the examination of University till December 1999 is against the basic principles of natural justice.

#. Mr.Anjaria, the learned counsel for respondents No.1 and 2, relying on decision of the Hon'ble Supreme Court in the case of Admission Committee, CII-1995 & Anr. v. Anandkumar & Anr, reported in (1998) 8 SCC 333, submitted that in the matter of decision taken by disciplinary committee of the University in the matter of unfair means used by students in examination, this Court has very very limited power of judicial review. He however admitted that normally, the statement of the student who has been caught using unfair means has to be recorded, which has not been done in the present case. He also fairly admitted that statement of other persons connected with the examination is also required to be recorded, which admittedly has not been recorded in the present case. He has furnished explanation for not adopting and following

this normal procedure in this case, by contending that the petitioner was found indulging in using unfair means in the examination at about 1:50 p.m. and by that time, hardly ten minutes had left for completion of the said examination. In view of this time limit, the statement of the petitioner as well as that of Senior Supervisor or Block Supervisor could not be recorded. Lastly, it is contended that there is a procedural lapse in the matter and the same can be rectified by reminding the matter back to the Committee for deciding afresh.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. It is true that in the matter where decision has been given by disciplinary committee of the University in a case where a student is found to be using unfair means in the examination conducted by University, this Court has very limited power of judicial review, but it cannot be said that this Court has no power of judicial review in such matters or any decision taken by disciplinary committee of the University in such cases is free from any scrutiny by this Court under Article 226 of the Constitution of India. The case on which reliance has been placed by learned counsel for respondents No.1 and 2 is hardly of any help to him in this case. Each case has to be decided on the basis of its own facts and looking to the glaring facts of this case which are not disputed, I am satisfied that this writ petition deserves to be allowed. The explanation furnished by the learned counsel for the respondents No.1 and 2 for not recording the statements of the petitioner, Block Supervisor & Senior Supervisor, is hardly having any relevance or it is far from just, adequate and reasonable explanation. There was more than sufficient time available to Prof.A.C.Tadvi if he would have so desired for recording statements of the petitioner, Block Supervisor and Senior Supervisor. There is yet another aspect which needs to be noticed here. The Senior Supervisor has given in writing to the University interalia stating that no such incident has taken place at the examination center. The Senior Supervisor has also not supported the case of the University, though on a different footing. The learned counsel for the respondents has failed to satisfy this Court as to why these two writings sent to the University have not been considered. He has felt contended by only saying that these two are local persons and the petitioner, being a local person, it is a case where these two persons are supporting him. This is merely an inference which is sought to be drawn by the learned counsel for the respondents without there being any

material on the record in support thereof. It is true that these two persons may be local persons but only on the basis of that, I fail to see any justification in the action of the disciplinary committee to altogether ignore two important material evidence.

##. In the result, this special civil application succeeds and the same is allowed and the order dated 21.11.98, Annexure-F, passed by the University is quashed and set aside. The respondents are directed to pay Rs.2,000/= as costs of this writ petition to the petitioner. Rule made absolute.

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[sunil]